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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1309 of 1997

to

FIRST APPEALNo 1310 of 1997

with

Civil Application No. 4536 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO LTD

Versus

HEIRS & L.R.OF DHIRUBHAI VASHRAMBHAI

Appearance:

MR ARUN H MEHTA for appellants.

MR SHAKEEL A QURESHI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

Date of decision: 12/03/98

COMMON ORAL JUDGEMENT (Per A.M. Kapadia, J.):

On 19.12.1994, at about 5.30 P.M., injured Banesing Rathod alongwith deceased Dhirubhai, was proceeding on Motor cycle No.GJ 4-C 5558, on Rajkot-Bhavnagar Highway. The said motor cycle was being ridden by Banesing at a moderate speed and on the correct side of the road, while deceased Dhirubhai was the pillion rider. When they thus reached at the place of occurrence, i.e., near GIDC Toll Naka at Sihore, one F.C. Van No. GTS 8997 came from the opposite direction. The said van was being driven in a rash and negligent manner and it dashed against the motor cycle violently. As a result of the impact, both Banesing and Dhirubhai, fell down on the road and sustained injuries. Ultimately, during the treatment, Dhirubhai succumbed to the injuries. Therefore, heirs and legal representatives of deceased Dhirubhai, claiming dependency benefits, filed MACP No. 323 of 1995 for compensation of Rs.5,00,000/- Banesing, who was riding the motor cycle, also sustained serious injuries and he filed MACP No. 343 of 1995 claiming compensation of Rs.4,30,000/- for the personal injuries sustained by him under various heads, including mental pain, shock and sufferings, economic loss, etc., before the MACT, Bhavnagar.

Both the claim petitions were contested by the insurer of the Van involved in the accident raising similar and identical points, inter alia, contending that the claim petitions are false and not tenable at law. The allegations and averments with regard to the age of the deceased, his income, nature of work, his accidental death, mental pain, shock and suffering undergone, incidental expenses incurred on many counts, loss of income, dependency benefits, loss of expectation of life and their relationship with the deceased, are all denied and not admitted by the insurer. Similarly, the averments and allegations of the injured applicant with regard to his own age, income, nature of work, injuries, fractures, operations, disablement caused, period of treatment and hospitalisation, mental pain, shock and sufferings undergone, loss of income, expenses incurred on various incidental counts, past and future economic loss, etc., are all denied and not admitted by the insurer.

So far as the cause of accident was concerned, it was emphatically denied by the insurer that the accident was the result of rash and negligent driving of the van insured with them. In this connection, it was contended that the person who was riding the the motor cycle himself was responsible for causing the accident and because of his negligence and rashness the accident in

question took place.

The learned Tribunal, after considering the evidence adduced and produced before it, has recorded the finding of negligence against the driver of the van involved in the accident as well as the rider of the motor cycle in the ratio of 75:25. Considering the income of the deceased as well as the injured applicant and the nature of injuries sustained by the applicant, determined the compensation and awarded compensation of Rs.3,40,000/with interest and proportionate cost to the claimants of MACP No. 323 of 1995, i.e., heirs and legal representatives of Dhirubhai, while full amount of Rs.4,30,000/- as claimed were awarded as compensation to the applicant of MACP No.343 of 1995 with interest and proportionate cost.

Being aggrieved by the aforesaid common judgment and award passed in both the Motor Accident Claims Petitions, the insurer has filed both these appeals invoking the aids of provisions of Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short).

On behalf of the appellant, insurance company, Mr.Arun H. Mehta appeared while on behalf of the original claimants, Mr. Shakeel Qureshi appeared and they made submissions mainly on the quantification of compensation. We have heard the learned advocates at length.

We have gone through the judgment and award recorded by the Tribunal. We have also perused the evidence adduced and produced before the Tribunal, the copies whereof have been supplied to us by the learned advocate Mr. Mehta during the course of submission. Considering the facts and circumstances of the case, we could cull out that so far as the accident in question is concerned, it was occurred when the motor cycle ridden by Banesing reached near GIDC Toll Naka, at Sihore, on 19.12.1994, at about 5.30 P.M. The injured applicant Banesing was riding the motor cycle while deceased Dhirubhai was pillion rider. It cannot also be disputed that from the opposite direction the van involved in the accident came with an excessive speed and violently dashed against the motor cycle. The oral evidence of the injured applicant gets complete corroboration from the documentary evidence, that is, FIR and Panchnama, which in terms clarify that the accident in question took place at the place shown in the Panchnama. The description of the place and width of the road is also very much mentioned in the Panchnama. On perusal of the same, we are fully in agreement with the finding recorded by the Tribunal so far as the negligence attributed to the driver of the Van as well as

the rider of the motor cycle in the ratio of 75:25 is concerned. Oral evidence of the injured applicant is so much in consonance with the documentary evidence, such as, FIR and Panchnama, which leaves no room of doubt about the rashness and negligence on the part of the driver of the Van. Therefore, we are fully in agreement with the finding recorded by the Tribunal with regard to the apportionment of negligence on the part of the driver of the Van and motor cycle, which is apportioned at 75:25 respectively.

Now the next question which comes for determination is about the quantification of compensation in both the claim petitions.

It is well settled principle and proposition of law that the Tribunal has to award just compensation which should not be a source of profit to the victim of the road accident or dependents of the deceased or punitive to the person liable. When we talk of just compensation, we talk of compensation which the Tribunal thinks is fair, equitable, reasonable and morally right, that is, in consonance with the public policy, no matter if it is a personal injury case or a case arising out of the fatal accident, some guess work from the available material can be done and is permissible but it must be remembered that in such cases, arithmetic may be a good servant but would be a bad master.

In this connection, a reference may be made to the judgment rendered by the Bombay High Court in the case of Maharashtra State Road Transport Corporation v. Rajarani, 81 B.L.R. 241, wherein it is held thus:

> "That the standard must be an objective standard and although it may involve some guess work, hypothetical considerations, speculations and conjuncture and mere consideration of sympathy and solatium should not enter into assessment of damages, appear to be relevant principles applicable to personal injuries."

A reference may be invited to the case of C.K. Subramonia Iyer v. Kunhi Kuttan Nair, 1970 ACJ 110 (SC) wherein the Supreme Court observed thus:

> "In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjuncture to some extent is inevitable."

In case of Vinodkumar Shrivastav v. Ved Mitra Vohra, 1970 ACJ 189 (MP), the High Court of Madhya Pradesh observed thus:

> "Quantum- Principles for assessment- compensation must be reasonable - It should be assessed with moderation - Regard must be had to comparable cases - The sums awarded should be conventional These rules should be followed to achieve uniformity.
>
> It is only by way of adherence to these self-imposed rules that the Courts can decide like cases in like manners and bring about a measure of predictability of their awards. These considerations are of great importance if administration of justice in this field is to command the respect of the community."

As observed by Supreme Court in the case of Concord of India Insurance Co. Ltd. v. Nirmala Devi, 1980 ACJ 55 (SC) the determination of the quantum must be liberal not niggardly since the law values life and limb in the country in generous scales.

To say the least we should not out-shylock the shylock in doing justice or fixing the quantum of compensation.

From these decisions referred to hereinabove, it is clear that the emphasis is on the three fold principles; (i) that the award should be moderate, just and fair and it should not be oppressive to the respondent, (ii) the award should not be punitive, exemplary and extravagant, and (iii) as far as possible similar cases must be decided similarly. The community at large may not carry the grievance of discrimination.

Bearing in mind the aforesaid principles laid down by various High Courts and the Supreme Court, we may now advert to find out whether the quantification made by the Tribunal is just, fair, moderate, reasonable and in consonance with the evidence recorded by it or is it oppressive or punitive, exemplary or extravagant.

So far as the First Appeal No. 1309 of 1997 is concerned, it is filed challenging the judgment and award passed in MACP No. 323 of 1995. The Tribunal has awarded a total sum of Rs.3,40,000/- by way of compensation to the heirs and legal representatives of deceased Dhirubhai, who was travelling on the pillion seat of the motor cycle, ridden by Banesing. It was the

case of the claimants that at the relevant time the deceased was doing diamond cutting business and was earning Rs.3000 to Rs.3500 per month. Unfortunately, there is no corroborative evidence to support the oral evidence of the widow of the deceased. Inspite of that the Tribunal has considered the prospective income at Rs.3000/- and after deducting amount for personal up-keepment, Rs.2000 is considered as dependency benefit per month. The Tribunal has adopted 18 multipliers and thus the total dependency was considered at Rs.4,32,000/to which added Rs.20,000/- under the head of loss of expectation of life. Thus, in all, the Tribunal awarded an amount of Rs.4,52,000/- The Tribunal has reduced 25% from the said amount because of the apportionment of negligence, i.e., Rs.1,13,000/- and thus the Tribunal has awarded Rs.3,40,000/- rounded off.

Here we would like to mention that the Tribunal has wrongly deducted 25% by way of contributory negligence because deceased Dhirubhai was not riding the motor cycle. He was only a pillion rider and Banesing was riding the motor cycle at the relevant time. Therefore, the Tribunal ought not to have deducted any amount on the ground of contributory negligence from the compensation awarded to the heirs and legal representatives of deceased Dhirubhai. However, we find that the income at Rs.3000/- per month as assessed by the Tribunal, is only on guess work, without any corroborative piece of documentary evidence. In our opinion, therefore, the Tribunal has considered the income on a very higher side and we do not approve the same. As the Tribunal has considered income on higher side and reached at the figure of Rs.3,40,000, we propose to reduce the amount of compensation by 25% in order to arrive at a fair and reasonable amount of compensation. Thus, after deducting 25% amount from Rs.3,40,000 (Rs.3,40,000 minus Rs.85,000 being 25%) the claimants are entitled to an amount of Rs.2,55,000/- as compensation in all, which, according to us, is the just, reasonable, fair and moderate compensation. Therefore, the claimants of MACP No.323 of 1995 are entitled to only Rs.2,55,000/- as compensation with interest and proportionate cost.

Now coming to First Appeal No. 1310 of 1997, wherein the judgment and award passed in MACP No.343 of 1995 is impugned before us, the claimant has claimed total compensation of Rs.4,30,000/-. He received severe injuries which have resulted into permanent partial impediment of right leg and right arm and during the course of treatment, his right leg was amputed and right arm became disfigured. The injured applicant suffered

total disablement to the extent of 80% and, therefore, he took intensive treatment for a pretty long period, initially at Sir T. Hospital, Bhavnagar, then from a private orthopaedic surgeon, Dr. Vora at Bhavnagar and again he took further treatment from Civil Hospital, Ahmedabad and also from Dr. V.N. Shah, an orthopaedic surgeon, at Jamnagar.

After considering the evidence and the injuries sustained by the applicant, the Tribunal has awarded compensation of Rs.60,000/- under the head of mental pain, shock and sufferings. The injured applicant was engaged in diamond cutting business and he has become totally disabled to do that business. The Tribunal considered the prospective income at Rs.4,000/- per month and assessed the disablement at 40% and arrived at the conclusion that the monthly loss would be Rs.1600/- and thus awarded total compensation of Rs.3,45,600/- under the head of future economic loss by applying 18 years purchase factor. Over and above this, the Tribunal has also awarded an amount of Rs.96,000/- for the actual economic loss suffered during the treatment. Thus, in all, the Tribunal has awarded Rs.6,06,600/- by way of compensation under various heads. The Tribunal has deducted 25% amount from the aforesaid amount of compensation as the applicant was also held negligent in riding the motor cycle to the extent of 25%. Therefore, the Tribunal found that the total compensation payable to the injured claimant was assessed at Rs.4,55,000/- However, as the claim was restricted to Rs.4,30,000/-, the Tribunal awarded the compensation as per the claim made by the applicant.

We have gone through the evidence recorded by the Tribunal. We have also considered the injuries sustained by the applicant and consequent impediment as a result of the amputation of leg. We have also considered the income of the injured applicant, which, according to us, is on a little higher side. The Tribunal has considered the income of the injured applicant at Rs.4000 without any corroborative documentary evidence merely on guess work, surmises and conjectures which is not sustainable. Therefore, we are of the opinion that the compensation awarded by the Tribunal is required to be reduced by 25%.

Thus, after deducting 25% from the total amount of compensation of Rs.4,30,000/-, the net figure would come to Rs.3,22,500/- and the claimant is entitled to this amount by way of compensation, which, according to us, is just, correct, reasonable, fair and moderate compensation and can take care of the injured applicant throughout the remaining span of his life. Therefore, the applicant of

this MACP No.343 of 1995 is entitled to receive an amount of Rs.3,22,500 by way of compensation under various heads with interest and cost.

If the appellant insurance company has deposited Rs.25,000/- in each appeal before this Court, the said amounts shall be transmitted to the concerned Tribunal forthwith. On the amount, as per the modified award, being deposited by the insurance company in the Tribunal, it shall be open for the Tribunal to pass necessary orders for apportionment, disbursement, investment and deficit court fees, if any.

In the net result, both the appeals succeed in part and accordingly they are partly allowed to the extent as mentioned above. It is clarified that the claimants are entitled to proportionate costs and interest on the aforesaid amount. The award passed by the Tribunal is modified to the aforesaid extent.

Accordingly, the above two appeasls are partly allowed. There shall be no order as to costs.

No order on civil application.